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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,852	10/21/2003	Christopher Stevens	18282US01	6937
23446 7590 03/16/2010 MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO, IL 60661				
EXAMINER				
LEIVA, FRANK M				
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3714				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/690,852

**Applicant(s)**

STEVENS ET AL.

**Examiner**

FRANK M. LEIVA

**Art Unit**

3714

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 7, 9-15, 18, 20 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 9-15, 18, 20 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### **Acknowledgements**

1. The examiner acknowledges only receiving amendments to claims 4 and 20 as corrections of typographical errors in applicant's submission filed 23 December 2009.

### **Response to Arguments**

2. Applicant's arguments filed 23 December 2009 have been fully considered but they are not persuasive for the following reasons;
3. Regarding the argument on page 7 of applicant's remarks; "*Seelig does not determine any probability of a successful subsequent outcome that is based on (1) the subsequent prize and (2) the credits accumulated. Instead, the probability of a subsequent prize in Seelig is fixed.*" The examiner understands that determining a probability of outcome is a known mathematical equation that is always dependent of the same criteria and is always the same number no matter who calculates it. A mathematical expression of the outcome of the game is not inventive; also the determination serves no purpose and is only there to report the machines hold ratio as it is in all gambling machines. It is inherent or (required) in all gambling machines to show the % hold in the PAR sheets for the manufacturer to sell the machine to a casino or enterprise and to get it approved by the authorities before the games are offered to the public. Also the notion that the probability of outcome of the subsequent prize is fixed, is not mentioned in Seelig nor it is mentioned in the claims of the present invention that the probability varies, the claim language simply states that the probability is determined and not used for anything after that.
4. Regarding the argument on page 7 of applicant's remarks; "*Claims 11 and 21 presently stand rejected under 35 U.S.C. §103(a) as being unpatentable over Seelig in view of GB Patent No. 21 14347 ("Arnold). Claims 11 and 21 dependent from claims 1 and 12, respectively, and are allowable in view of Seelig as discussed above. Arnold does not cure the deficiencies of Seelig.*" The examiner points that the previous argument of Seelig covering the limitations of claims 1 and 12 are covered and traverse and thus this argument is

moot since Arnold is not used in the action to cure deficiencies of Seelig in regards of claims 1 and 12.

5. Regarding the argument on page 7 of applicant's remarks; *"Rather, if a player wins a prize, Arnold discloses automatic wagering of prize. See page 1, lines 29 - 40, and page 1, line 17 - page 2, line 3. That is, Arnold teaches away from combining with Seelig to prompt a player to continue or end a feature game, and thus it would not have been obvious to combine Seelig and Arnold."* The examiner points that Arnold has a consecutive bonus feature in which the player is allowed to double his winnings or wager a part of the winnings on what Arnold calls a "Gamble", Seelig's bonus round is also a consecutive game for which the player can attempt over an over to increase his winnings, thus Arnold does not teach away, but teaches a method in which the player can choose how much of the winnings the wager in the next round of the bonus. The combination of Seelig and Arnold is proper and the argument not persuasive.

6. Finding the arguments not persuasive, the rejections of claims 1-4, 7, 9-15, 18 and 20-21 are found to be proper and stand. Furthermore having the amendments only corrected typographical errors the previous rejections are restated below to assist prosecution.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**8. Claims 1-4, 7, 9-10, 12-15, 18 and 20 are rejected under 35 U.S.C. 102(a) and (e) as being anticipated by Seelig et al. (US 2002/0107066 A1).**

**9. Regarding claims 1 and 12;** Seelig discloses a gaming machine comprising a display displaying a number of won credits, (fig. 1); and a game controller controlling images of symbols to be displayed on the display, (¶ [0045]); effecting on the display a bonus feature wherein at least a first outcome is guaranteed to be a successful outcome, (fig. 5); awarding a prize of a number of credits, accumulating the number of credits to the won credits, (fig. 5); offering through the display a choice between continuing the bonus feature and ending the bonus feature, and, if the choice is continuing the bonus feature, determining a subsequent prize for a successful subsequent outcome, (fig. 9); a probability of a successful subsequent outcome based on the subsequent prize of a successful subsequent outcome and the credits accumulated, and a subsequent outcome, if the subsequent outcome is a successful outcome, offering through the display the option of continuing with the bonus feature, but if the subsequent outcome is an unsuccessful outcome, ending the bonus feature, and forfeiting at most a portion of the credits accumulated, (fig. 9).

**10. Regarding claims 2 and 13;** Seelig discloses wherein the game controller affects the bonus feature when a predetermined trigger condition occurs in a base game, (fig. 3 and 5).

**11. Regarding claims 3, 4, 14 and 15;** Seelig discloses wherein the display displays a paytable that indicates a number of credits that will be paid for various successful outcomes which occur during the playing of the bonus feature, and wherein the display includes a prize meter which provides a cumulative total of credits won due to

successful outcomes which have occurred during the playing of the bonus feature (fig. 1), belly glass payable and bonus meter 52 and 53 and total prize meter 54.

**12. Regarding claim 10;** Seelig discloses further comprising a selector receiving an input choice between continuing and ending the bonus feature, (¶ [0038]).

**13. Regarding claims 7 and 18;** Seelig discloses wherein the choice is continuing the bonus feature; the game controller determines the prize for a successful subsequent outcome using a weighted random selection, (claim 15).

**14. Regarding claims 9 and 20,** according to admitted prior art that all games of chance have and inherent probability and calculation of that probability is not dependent of an equation but on the rules of the game. Calculation of the probabilities involved in the game does not carry patentable weight.

Regarding the examiner's assertion of Official Notice; the examiner deems the Official Notice asserted in the previous action as admitted prior art since there was no contest or traverse raised in applicant's response to the action. Please see MPEP 2144.03.

#### ***Claim Rejections - 35 USC § 103***

**15.** The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**16. Claims 11 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seelig in view of Arnold et al. (GB 2114347 A).**

17. Regarding the analogous combination of art; Seelig discloses a wagering game with a secondary game feature that allows the player to repetitive gamble the winnings of the base game in order to improve the prize; Arnold discloses a wagering game that allows the repetitive gamble of the winnings of the base game in a feature game.

18. **Regarding claims 11 and 21**, Seelig fails to disclose the amount of credits to be gambled in the feature game so we are left to assume that it is the entire amount; Arnold discloses wherein the portion of forfeited credits is half of the accumulated credits, (page 3 line 117-page 4 line 3). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to allow the player to control the amount of the winnings the player wished to risk on the feature game from Arnold's disclosure into the very similar disclosure of Seelig in order to enhance the player's choices in the game and play latency.

#### ***Examiner's Note***

19. Examiner has cited paragraphs and figures in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

#### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRANK M. LEIVA whose telephone number is (571)272-2460. The examiner can normally be reached on M-Th 9:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter D. Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FML

03/13/2010.

/Peter D. Vo/

Supervisory Patent Examiner, Art Unit 3714